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**TERMINAL DISCLAIMER TO OBIATE A PROVISIONAL DOUBLE PATENTING
REJECTION OVER A PENDING SECOND APPLICATION**

Docket Number (Optional)
SPINE 3.0-437 CIPCIPCIPCIPCON XVI

In re Application of: Joseph P. Errico, Michael W. Dudasik, and Rafail Zubok

Application No.: 10/642,524

Filed: August 15, 2003

For: AXIALLY COMPRESSIBLE ARTIFICIAL INTERVERTEBRAL DISC HAVING A CAPTURED BALL AND SOCKET JOINT WITH A SOLID BALL AND RETAINING CAP

The owner*, SpineCore, Inc., of 100% percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173 as shortened by any terminal disclaimer filed prior to the grant of any patent granted on pending second Application Number 10/642,523, filed on August 15, 2003, of any patent granted on the pending second application. The owner agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the second application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

08/11/2006 SSESHE1 00000108 121095 10642524
01 FC:18.4 130.00 DA

[Signature] August 8, 2006
Signature Date
Raymond Garguilo, Jr.
Typed or printed name

- ☒ The Commissioner is hereby authorized to charge the disclaimer fee under 37 CFR 1.20(d) to Deposit Account No. 12-1095

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: August 8, 2006 Signature: *[Signature]* (Raymond Garguilo, Jr.)